

REMARKS

Upon entry of the present amendment the claims in the application are claims 25-50, of which claims 25, 29, and 50 are independent.

Restriction Requirement

Claims 25-50 have been placed under a restriction requirement under 35 USC 121, 372 in the Office Action. Upon entry of the present amendment, claims 25-50 are pending in the application, of which claims 25, 29 and 50 are independent.

SUMMARY OF THE EXAMINER'S POSITION

Specifically, the Examiner has identified the following inventions which are not so linked so as to form a single general inventive concept under PCT Rule 13.1:

Group I Claims 25-28 drawn to an electrically conductive member.

Group II Claims 29-49 drawn to a fuel cell stack.

Group III Claim 50 drawn to a maintenance method.

The Examiner has required restriction to one of the inventions for examination. The Examiner has taken the position that : Invention Group I is separate from the other groups because it does not contain a special technical feature that defines a contribution over the prior art, with reference to Draper et al. US 2004/0234830 (MPEP 1850); similarly Invention Group II is separate from the other groups because it does not contain a special technical feature that defines a contribution over the prior art, again, with reference to Draper, and because it requires a plurality of solid oxide fuel cells not required by Group I; and Group III requires method steps, i.e., replacing step, baking step, power generation step, not required by Groups I, II..

In order to comply with Patent Office requirements, again, applicant elects with traverse

Group II including claims 29-49.

DISCUSSION

There are two criteria for a proper requirement for restriction between patentably distinct inventions: (A) The inventions must be independent or distinct as claimed; and (B) There would be a serious burden on the examiner if restriction is not required.

Every requirement to restrict has two aspects: (A) the reasons why each invention *as claimed* is either independent or distinct from the other(s); and (B) the reasons why there would be a serious burden on the examiner if restriction is not required, i.e., the reasons for insisting upon restriction therebetween. Neither aspect has been met in this application.

Here all claims 25-50 pertain to the same inventive concept, i.e., the use of a metal sheet having a three-dimensional porous structure of a continuous skeleton as an electrically conductive material of a fuel-cell stack that can solve the above problems of the prior art and can constitute a good fuel-cell stack.

With regard to US Patent Publication No. US 2004/0234830, applicant respectfully submits that disclosure of such publication, including nickel foam strips does not anticipate or make obvious the presently claimed invention.

It is further respectfully submitted that the inventions as grouped by the Examiner would not place a serious search burden on the Examiner. For example, the Claims of Group II involve the conductive member of Group I and involve baking or power generation such as in the method of Group III.

MPEP section 803 states **“If the search and examination of all the claims in an application can be made without serious burden, the examiner must examine them on the merits, even though they include claims to independent or distinct inventions”**. MPEP 808.02 also states “Where, however, the classification is the same and the field of search is the

same and there is no clear indication of separate future classification and field of search, no reasons exist for dividing among independent or related inventions”.

In view of the above remarks, Applicant respectfully requests the restriction requirement be withdrawn and the claims, 25-50, examined on the merits as soon as possible.

CONCLUSION

Based on all of the foregoing, applicant respectfully submits that the restriction requirement set forth in the Office Action have been overcome, and, all of the pending claims are believed to be allowable. Applicant respectfully requests reconsideration and withdrawal of the restriction requirement, and allowance of the pending claims.

If the Examiner feels that the prosecution of the present application could be advanced by a telephone discussion, applicant respectfully requests that the Examiner telephonically contact the undersigned representative to resolve any issue(s) of concern, and move forward with the prosecution of the application.

Favorable consideration is respectfully requested.

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October 2, 2009

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